STATE OF MICHIGAN

COURT OF APPEALS

AP-SER, INC., formerly known as ADMINPRO, INC., BOWER-HR, INC., HH-SER, INC., HL-SER, INC., HM-SER, INC., LH-SER, INC., LL-SER, INC., LM-SER, INC., ML-SER, INC., and MM-SER, INC., Plaintiffs-Appellants,	UNPUBLISHED February 10, 2011
v STATE OF MICHIGAN and DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH/UNEMPLOYMENT INSURANCE AGENCY, Defendants-Appellees.	No. 295288 Court of Claims LC No. 09-000101-MK

Before: SERVITTO, P.J., and GLEICHER and SHAPIRO, JJ.

PER CURIAM.

Plaintiffs, all Michigan corporations, commenced this action by filing a one-count complaint against the state and the Unemployment Insurance Agency (UIA) in the Court of Claims. The complaint sought to enforce a settlement agreement negotiated by the parties, after the UIA had issued an April 2007 determination impacting plaintiffs' classifications "for unemployment insurance reporting purposes" and increasing the amount of outstanding unemployment taxes that plaintiffs owed the state. The Court of Claims granted defendants' motion for summary disposition pursuant to MCR 2.116(C)(8), and plaintiffs appeal as of right. We affirm.

> Appellate review of a motion for summary disposition is de novo. MCR 2.116(C)(8) tests the legal sufficiency of the claim on the pleadings alone to determine whether the plaintiff has stated a claim on which relief may be granted. The motion must be granted if no factual development could justify the plaintiff's claim for relief. [*Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).]

"The trial court and this Court must accept all well-pleaded factual allegations as true, construing them in [the] light most favorable to the nonmoving party." *Cummins v Robinson Twp*, 283

Mich App 677, 689; 770 NW2d 421 (2009). When an action rests on a written agreement, a copy of the contract generally must accompany the complaint, MCR 2.113(F), and the written agreement thus "becomes part of the pleadings themselves, even for purposes of review under MCR 2.116(C)(8)." *Laurel Woods Apts v Roumayah*, 274 Mich App 631, 635; 734 NW2d 217 (2007).

The parties dispute whether the agreement enforceability conditions in MCR 2.507(G) apply here, and whether the parties reached an agreement concerning the terms of a settlement. The interpretation and application of a court rule present legal questions that this Court considers de novo. *Kloian v Domino's Pizza, LLC*, 273 Mich App 449, 456; 733 NW2d 766 (2006).

> Michigan courts construe court rules in the same way that they construe statutes. "Well-established principles guide this Court's statutory (or court rule) construction efforts. We begin our analysis by consulting the specific . . . language at issue." *Bloomfield Charter Twp v Oakland Co Clerk*, 253 Mich App 1, 10; 654 NW2d 610 (2002). This Court gives effect to the rule maker's intent as expressed in the court rule's terms, giving the words of the rule their plain and ordinary meaning. If the language poses no ambiguity, this Court need not look outside the rule or construe it, but need only enforce the rule as written. [*Kloian*, 273 Mich App at 458 (some citations omitted).]

Plaintiffs maintain that the Michigan Court Rules do not govern the enforceability of the settlement agreement in this case, in light of the fact that it arose in the course of UIA-related administrative proceedings governed by the Administrative Procedures Act (APA), MCL 24.201 *et seq*. Plaintiffs cite no authority for the proposition that the UIA comes within the purview of the APA, but defendant does not contest the principle that an administrative agency generally must comply with the APA. *Boyd v Civil Service Comm*, 220 Mich App 226, 235; 559 NW2d 342 (1996), citing MCL 24.313. Seemingly, however, plaintiffs ignore that the relief requested in their complaint has nothing to do with administrative procedures; plaintiffs did not seek before the Court of Claims judicial review of an agency action, decision or rule, nor do they ask this Court to consider agency action in any respect.[1] Cf., *Galuszka v State Employees Retirement Sys*, 265 Mich App 34, 38-45; 693 NW2d 403 (2004); *Boyd*, 220 Mich App at 232-236. They want only to judicially enforce a purported settlement agreement with the UIA.

The text of MCR 2.507(G), located in subchapter 2.500 of the Michigan Court Rules, reads:

> An agreement or consent between the parties or their attorneys respecting the proceedings in an action, subsequently denied by either party, is not binding unless it was made in open court, or unless evidence of the agreement is in

[1] Notably, the parties did not dispute at the summary disposition hearing that their dispute concerning the UIA's 2007 determination "is, in fact, being litigated at the administrative level, which is put on hiatus [stayed] because of this current action."

> writing, subscribed by the party against whom the agreement is offered or by that party's attorney.

At the outset of the civil procedure court rules in Chapter 2, MCR 2.001 delineates the reach of the rules in Chapter 2:

> The rules in this chapter govern procedure in all civil proceedings in all courts established by the constitution and laws of the State of Michigan, except where the limited jurisdiction of a court makes a rule inherently inapplicable or where a rule applicable to a specific court or a specific type of proceeding provides a different procedure.

Reviewing the plain language of MCR 2.001, it becomes evident that MCR 2.507 applies in this civil action filed in the Court of Claims, a creature of statute, MCL 600.6401 *et seq*. (the Court of Claims Act), because, as plaintiffs argue on appeal, the UIA's "rules do not address the manner in which a settlement must be documented or presented to the hearing referee." Alternatively stated, accepting plaintiffs' position that no rules relating to the UIA "provide[] a different procedure," MCR 2.001, that rule clearly and unambiguously directs the application of MCR 2.507 in this civil action brought in the Court of Claims.

"A contract for the settlement of pending litigation that fulfills the requirements of contract principles will not be enforced unless the agreement also satisfies the requirements of MCR 2.507[G]." *Kloian*, 273 Mich App at 456.

> The existence and interpretation of a contract are questions of law reviewed de novo. An agreement to settle a pending lawsuit is a contract and is to be governed by the legal principles applicable to the construction and interpretation of contracts. Before a contract can be completed, there must be an offer and acceptance. Unless an acceptance is unambiguous and in strict conformance with the offer, no contract is formed. Further, a contract requires mutual assent or a meeting of the minds on all the essential terms. [*Kloian*, 273 Mich App at 452-453 (internal quotation and citations omitted).]

After parsing the contentions in plaintiffs' complaint, together with the appended documentation on which they rely in asserting the existence of a settlement contract, we discern no meeting of the minds between the parties with respect to the essential terms of an agreement. Complaint exhibit B contains plaintiffs' July 31, 2007 proposed resolution of the UIA's April 2007 determination, specifically to consolidate five plaintiff entities as "a single employer for UIA purposes," effective January 2007. In exhibit C, a November 2007 letter from Rodger Palm, a "Trust Fund, Tax, and Field Audit" director, Palm responded, in pertinent part:

> The Agency has carefully considered your offer, ... The Agency concludes, however, that the proposal does not sufficiently take into account all of the entities that must be consolidated for UI tax purposes, and secondly the limitation to consolidation from the beginning of 2007 fails to reflect the loss to the Unemployment Insurance Trust Fund, and therefore your offer cannot be accepted by the Agency.

Negotiations resumed at some point in Spring 2009, as reflected in exhibit D, a letter from plaintiffs' counsel reiterating their offer to consolidate five plaintiff entities for UIA purposes, effective January 2009. Exhibit E shows that the parties or their representatives met on June 30, 2009, and that plaintiffs' counsel later emailed a "contribution payment history" of 2007-2009 payments by five plaintiff entities. On July 21, 2009, an assistant attorney general emailed plaintiffs' counsel "the proposed settlement agreement, in which she "highlighted the portions that still need to be completed," which consisted of "the total obligation owed [by five plaintiff entities] . . . as of June 30, 2009," and a date by which one plaintiff entity would "pay to the UIA, under the separately executed Payment Agreement, the Total Tax Obligation . . . ." (Complaint, exhibit F). The final complaint exhibit (G) is an email from plaintiffs' counsel the next day, July 22, 2009, replying in relevant part, "We have attached for your consideration the proposed Settlement Agreement, with suggested changes shown in ***bold italics*** for your ease of reference. [Emphasis in original.] All but one are cosmetic. *The one that is not, however, is significant* and flows from a recent miscommunication for which we are partially at fault." (Emphasis added). In summary, the exhibits to the complaint prove as a matter of law that the parties did not reach "mutual assent or a meeting of the minds on all the essential terms" of any proposed settlement. *Kloian*, 273 Mich App at 452-453 ("Unless an acceptance is unambiguous and in strict conformance with the offer, no contract is formed.).

We have taken into account, and accepted as true, the following affidavit attestation by plaintiffs' counsel in complaint exhibit A:

> On June 25, 2009, Assistant Attorney General Shannon W. Husband, Counsel for the Agency in the Tax Appeal matter, called me to advise that the Agency was accepting the terms of the outstanding settlement proposal, as modified by my May 26, 2009 correspondence. *Her statement of acceptance was clear and unqualified*. The [hearing referee] was notified accordingly with respect to a pending June 30, 2009 Hearing date. [Emphasis added.]

Yet, even presuming the veracity of this paragraph, the documentation of the purported settlement agreement that plaintiffs appended to the complaint simply establishes no meeting of the minds among the parties *in writing and subscribed by defendants or their representatives*, in either electronic or written fashion. MCR 2.507(G); *Kloian*, 273 Mich App at 456-459 (emphasizing that both basic contractual elements and a subscribed writing must exist before a court may enforce a settlement agreement). Consequently, the Court of Claims correctly granted defendants' summary disposition of the complaint under MCR 2.116(C)(8).

Affirmed.

/s/ Deborah A. Servitto
/s/ Elizabeth L. Gleicher
/s/ Douglas B. Shapiro